UNITED STATES PATENT AND TRADEMARK OFFICE

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10/643,111	08/18/2003	**Vipul B. Patel**	61575-1025	3323

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EXAMINER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☐ Responsive to communication(s) filed on *01 August 2008*.

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-65* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-65* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on *05 December 2003* is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments, with regards to claims 1-60, filed 01 August 2008 have been fully considered but they are not persuasive.

On page 13 of the Applicant's Response, applicants argue that Ellis does not teach "a memory for providing a first application and a second application, the first application being used to realize at least a first programming service for providing first programming content in accordance with a broadcast schedule, the second application being used to realize at least a second programming service for providing second programming content after broadcast thereof, the second programming content being recorded during the broadcast thereof at a location remote from the apparatus, the second programming service being available only with respect to the second programming content. Applicants also note that Ellis teaches that all programs including regularly scheduled television programs broadcasted can be recorded.

The Examiner respectfully disagrees with applicants arguments, because Ellis discloses a client-server based interactive television program guide system with remote server recording. Ellis discloses that during normal television viewing (first programming service), the user tunes the set-top box to a desired channel. Additionally, a broadcast programming schedule is provided to the user from the main facility to assist the user in program selection ([0060], [0098]). Ellis further discloses that user may record programs during the broadcast thereof at a remote media server (second programming service) for later playback ([0074], [0075], [0133]). A memory (63) provides storage for

program guide application instructions [0114]. Therefore, Ellis meets the limitation of "a memory for providing a first application and a second application, the first application being used to realize at least a first programming service for providing first programming content in accordance with a broadcast schedule, the second application being used to realize at least a second programming service for providing second programming content after broadcast thereof, the second programming content being recorded during the broadcast thereof at a location remote from the apparatus".

Regarding Ellis' teaching that all programs, including regularly scheduled television programs broadcasted can be recorded, the Examiner respectfully disagrees with applicant's arguments because Ellis discloses that copy protected programs may not be recorded and will issue a warning indicating that the current program is copy protected and thus cannot be recorded ([0144], Fig. 16). Furthermore, the claim language only specifies that "the second programming service being available only with respect to the second programming content". The claim does not make a clear distinction between first programming and second programming service such that the second programming service is not available to programs provided in accordance with a broadcast schedule. Ellis teaches that programs recorded on the media server can be accessed from the recorded programs directory, which is separate from the regularly schedule program listings ([0145], Fig. 18b), which therefore meets the limitation of "the second programming service being available only with respect to the second programming content"

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-16, 18-29, 31-60, 64-65 are rejected under 35 U.S.C. 102(e) as being

anticipated by Ellis et al. (United States Patent Application Publication 2007/0199030),

herein after referenced as Ellis.

Regarding **claim 1**, Ellis discloses an "apparatus for receiving programming

content" [Fig. 2a El. 22]. The apparatus [22] comprising:

"a memory for providing a first application and a second application ([0114], Fig.

9 El. 63), the first application being used to realize at least a first programming service

for providing first programming content in accordance with a broadcast schedule

([0060], [0098]), the second application being used to realize at least a second

programming service for providing second programming content after broadcast thereof,

the second programming content being recorded during the broadcast thereof at a

location remote from the apparatus (remote media servers), the second programming

service being available only with respect to the second programming content" ([0075],

[0133], [0145], Figs. 18a-d, i.e. Ellis teaches that users may record programs during the

broadcast thereof at a remote media server and can access recorded programs through

a program menu listing), and

"a device [Fig. 7 El. 28] for receiving information concerning a change from a first

program source afforded the first programming service to a second program source

afforded the second programming service ([0098], [0124], [0125], i.e. the user accesses

the program guide to either view broadcasted programming or view recorded programs.

The selected service becomes active depending on which service the user chooses),

the second application being activated in response to the change and becoming

receptive to a request for obtaining a selected portion of the second programming

content" ([0180], Fig. 25b, i.e. the user can play a specific program segment).

Regarding **claim 2**, Ellis discloses "one or more tables are stored, which

associate the second program source with the second application" [0125].

Regarding **claim 3**, Ellis discloses "the one or more tables include a service

table" ([0122], [0125], i.e. Ellis discloses a service table as evidenced by the fact that

Ellis teaches a program guide with program listings for both broadcasted and recorded

programs, which would require service table to link programs with their programming

source).

Regarding **claim 4**, Ellis discloses "the first application is suspended when the

second application is activated" ([0098], [0157], i.e. Ellis discloses suspending the first

application when the second application is activated as evidenced by the fact that a

user that the user can view normal broadcast television or playback recorded

programming. The normal television viewing would therefore be suspended so that the

viewing of the recorded programming could commence).

Regarding **claim 5**, Ellis discloses that "the second program source is accessed

in accordance with the second application" ([0125], [0126]).

Regarding **claim 6**, Ellis discloses "a service request is generated based on the

information, the service request including an identifier of the second program source"

[0157].

Regarding **claim 7**, Ellis discloses that "the second application monitors for the

identifier in the service request" ([0156], i.e. the remote media server 24 responds to

playback requests).

Regarding **claim 8**, Ellis discloses that "the second application self-activates

when the identifier is detected" ([0157], i.e. the remote media server retrieves the

recorded program upon receiving the request and transmits the program to the user for

subsequent display).

Regarding **claim 9**, Ellis discloses that "the second application causes the first

application to be suspended" ([0098], [0157], i.e. Ellis discloses suspending the first

application when the second application is activated as evidenced by the fact that a

user that the user can view normal broadcast television or playback recorded

programming. The normal television viewing would therefore be suspended so that the

viewing of the recorded programming could commence).

Regarding **claim 10**, Ellis discloses that "the second program source is accessed

in accordance with the first application before the first application is suspended" ([0124],

[0125], [0157], i.e. both normal television view and recorded programs are accessed via the program guide).

Regarding **claim 11**, Ellis discloses that "the second application is also used to realize a manipulation of a presentation of the second programming content" [0164].

Regarding **claim 12**, Ellis discloses that "the manipulation includes a selected one of rewinding, pausing, and fast-forwarding" [0164].

Regarding **claim 13**, Ellis discloses that "the second application provides a user interface for selecting the selected portion of the second programming content" ([0125], [0126]).

Regarding **claim 14**, Ellis discloses that "the selected portion was broadcast within a predetermined period in the past" [0125].

Regarding **claim 15**, Ellis discloses that "in response to the request, the selected portion is obtained from the remote location through a communications network" [0157].

Regarding **claim 16**, Ellis discloses that "the communication network includes a broadband network" [0065].

Regarding **claim 18**, Ellis discloses "a set-top terminal" [Fig. 7 El. 28].

Regarding **claim 19**, Ellis discloses "a memory for providing first and second applications ([0114], Fig. 9 El. 63), the first application being used to realize at least a first programming service for providing first programming content in accordance with a broadcast schedule [0060], the second application being used to realize at least a second programming service for providing second programming content after broadcast thereof, the second programming content being recorded during the broadcast thereof

at a location remote from the apparatus, the second programming service being

available only with respect to the second programming content" ([0075], [0133], [0145],

Figs. 18a-d, i.e. Ellis teaches that users may record programs during the broadcast

thereof at a remote media server and can access recorded programs through a program

menu listing),

"storage for storing selected programming content" [Fig. 2a El. 15];

"a server for presenting the stored programming content in accordance with the

first application" [Fig. 2a El. 24]; and

"a device [Fig. 7 El. 28] for receiving information concerning a change from a first

program source afforded the first programming service to a second program source

afforded the second programming service ([0098], [0124], [0125], i.e. the user accesses

the program guide to either view broadcasted programming or view recorded programs.

The selected service becomes active depending on which service the user chooses), in

response to the change the second application becoming receptive to a request for

obtaining a selected portion of the second programming content" ([0180], Fig. 25b, i.e.

the user can play a specific program segment).

Regarding **claim 20**, Ellis discloses that "in response to the change, the second

program source is accessed in accordance with the first application" ([0125]. [0126], i.e.

both recorded and broadcasted programs are accessed through the program guide).

Regarding **claim 21**, Ellis discloses that "the storage stores the selected

programming content during broadcast thereof [0125], and at least before the request is

received, the server manipulates a presentation of the stored programming content in

accordance with the first application in response to a signal indicating a desired manipulation of a presentation of material from the second program source" ([Fig. 25b], i.e. the user can rewind a program before playing a specific portion of the program) .

Regarding **claim 22**, Ellis discloses that "the manipulation includes a selected one of rewinding, pausing and fast-forwarding" [0164].

Regarding **claim 23**, Ellis discloses that "after the request is received, a manipulation of a presentation of the selected portion of the second programming content is performed in accordance with the second application" ([0163], [0164]).

Regarding **claim 24**, Ellis discloses that "the manipulation includes a selected one of rewinding, pausing and fast-forwarding" [0164].

Regarding **claim 25**, Ellis discloses that "after the request is received, the selected portion of the second programming content is obtained from the remote location and buffered in the storage (31), the server presenting the buffered content in accordance with the first application" ([0102], [0157], i.e. Ellis discloses buffering as evidenced by the fact that the received stream would need to be buffered in the clients local storage before being presented on screen to mitigate latency issues).

Regarding **claim 26**, Ellis discloses that "the server manipulates a presentation of the buffered content in accordance with the first application in response to a signal indicating a desired manipulation of a presentation of the selected portion of the second programming content" ([0164], [0165], [0180], i.e. the presentation changes when the user, for example, rewinds or fast-forwards the program).

Regarding **claim 27**, Ellis discloses that "the manipulation includes a selected one of rewinding, pausing and fast-forwarding" [0164].

Regarding **claim 28**, Ellis discloses that "the selected portion is obtained from the remote location through a communications network" [0157].

Regarding **claim 29**, Ellis discloses that "the communications network includes a broadband network" [0065].

Regarding **claim 31**, Ellis discloses that "the second application provides a user interface for selecting the selected portion of the second programming content" ([0125], [0126]).

Regarding **claim 32**, Ellis discloses that "the selected portion was broadcast within a predetermined period in the past" [0125].

Regarding **claim 33**, Ellis discloses "a set-top terminal" [Fig. 7 El. 28].

Regarding **claims 34-48**, claims 34-48 are interpreted and thus rejected for the reasons set forth above in the rejections of claims 1-15, respectively. Claims 1-15 disclose an apparatus for receiving programming content and claims 34-48 disclose a method for use in an apparatus for receiving programming content. Thus claims 34-48 are rejected.

Regarding **claims 34-48**, claims 34-48 are interpreted and thus rejected for the reasons set forth above in the rejections of claims 1-15, respectively. Claims 1-15 describe an apparatus for receiving programming content and claims 34-48 describe a method for use in an apparatus for receiving programming content. Thus claims 34-48 are rejected.

Regarding **claim 49**, claim 49 is interpreted and thus rejected for the reasons set forth above in the rejection of claim 1. Claim 1 describes an apparatus for receiving programming content and claim 49 describes a method for use in an apparatus for receiving programming content. Thus claim 49 is rejected.

Regarding **claims 50-60**, claims 50-60 are interpreted and thus rejected for the reasons set forth above in the rejection of claims 20-28, 31-32, respectively. Claims 20-28, 31-32 describe an apparatus for receiving programming content and claims 50-60 describe a method for use in an apparatus for receiving programming content. Thus claims 50-60 are rejected.

Regarding **claim 64**, Ellis discloses that "the second service comprises: requesting second programming content that has been broadcasted within a predetermined period from the remote location ([0169], i.e. programs stored in the remote media server that are not accessed in a period of time will be deleted), in response to a request from a user; enabling the user to view the requested second programming content ([0074], [0170]); and enabling the user to manipulate the display of the second programming content" [0111].

Regarding **claim 65**, Ellis discloses that "the memory ([0114], Fig. 9 El. 63) further provides a third application being used to record selected programming content during the broadcast thereof in a second memory (optical digital storage device 31) located in the apparatus and providing the recorded selected programming content after broadcast thereof ([0101], [0102], [0133], i.e. the user may store recorded programs locally) wherein:

"if a request to view second programming content that has been broadcast within

the predetermined period is received from a user: the second application suspends the

third application and provides the second service" ([0114], [0169], i.e. recorded

programs stored in the remote media server not accessed within a period of time are

deleted, providing viewers a window of time to view the program. Thus, if a viewer

requests the program during the window of time, the program can be retrieved from the

remote media server eliminating the need to retrieve the program stored locally); and

"if a request to view selected programming content that has not been broadcast

within the predetermined period is received from a user: the third application retrieves

the selected programming content from the second memory, provides the selected

programming content ([0101], [0102], i.e. if the program is deleted from the remote

media server, the user can playback recorded programs stored locally, where there are

no time constraints when to view recorded programs), and enables the user to

manipulate the display of the selected programming content" [0111].

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

Claims 17, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Ellis in view of Plotnick et al. (United States Patent Application Publication

2002/0178447), herein after referenced as Plotnick.

Regarding **Claim 17**, Ellis fails to disclose "the broadband network includes a

hybrid fiber coaxial (HFC) cable network".

Plotnick discloses "the broadband network includes a hybrid fiber coaxial (HFC)

cable network" [0073]. Therefore, it would have been obvious to one of ordinary skill in

the art at the time the invention was made to modify Ellis by specifically providing the

broadband network includes a hybrid fiber coaxial (HFC) cable network, as taught by

Plotnick, so that fiber optic cable can be brought closer to the customer which provides

them with a high bandwidth low noise medium.

Regarding **claim 30**, claim 30 is interpreted and thus rejected for the reasons set

forth above in the rejection of claim 17. Claim 17 describes an apparatus for receiving

programming content and claim 30 also discloses an apparatus for receiving

programming content. Thus claim 17 is rejected.

Claims 61-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Ellis in view of Ellis (United States Patent Application Publication 2004/0226042), herein

after referenced as Ellis'042.

Regarding **claim 61**, Ellis fails to explicitly disclose that "the first programming

content is provided via one or more first channels; and the second programming content

is provided via one or more second channels different from the one or more first channels".

Ellis'042 discloses "the first programming content is provided via one or more first channels; and the second programming content is provided via one or more second channels different from the one or more first channels" ([0055], i.e. Ellis'042 teaches of dedicated channels for TV viewing along with dedicated on-demand playback channels). Thus, it would have been obvious to one of ordinary skill in the art to apply the technique of providing separate channels for regular broadcast television and on-demand television as taught by Ellis'042, to improve the remote recording system of Ellis for the predictable result of adjusting channel bandwidth according to the user's request, thereby providing a more flexible system for bandwidth management.

Regarding **claim 62**, Ellis fails to explicitly disclose "the second programming service is available only with respect to programming content associated with the one or more second channels".

Ellis'042 discloses "the second programming service is available only with respect to programming content associated with the one or more second channels" ([0055], i.e. on-demand programming is available on the on-demand channel).

Regarding **claim 63**, Ellis fails to explicitly disclose that "the change includes switching from one of the one or more first channels to one of the one or more second channels".

Ellis'042 discloses that "the change includes switching from one of the one or more first channels to one of the one or more second channels" ([0055], viewer can switch from watching broadcast television to on-demand).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALEXANDER Q. HUERTA whose telephone number is (571) 270-3582. The examiner can normally be reached on M-F(Alternate Fridays Off) 7:30-5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Beliveau can be reached on (571) 272-7343. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

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system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Alexander Q Huerta
Examiner
Art Unit 2427

October 28, 2008

/Scott Beliveau/
Supervisory Patent Examiner, Art Unit 2427